

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAVELL CONERLY,

Petitioner,

v.

Case No. 1:13-CV-617

MARY BERGHUIS,

HON. GORDON J. QUIST

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION IN PART

Respondent moved to dismiss Petitioner's amended petition for writ of habeas corpus because Petitioner had not exhausted all his claims. Petitioner did not respond to the motion. Magistrate Judge Hugh W. Brenneman, Jr. filed a Report and Recommendation (R & R) recommending that the Court grant Respondent's motion and dismiss the amended petition without prejudice. The R & R further recommended that Petitioner be allowed to file a second amended petition to delete the unexhausted claims set forth in Issues II and III of his amended petition. Thereafter, Petitioner filed a motion in which he requests that the unexhausted issues in his petition be deleted, and that he be permitted to proceed on the issues that were exhausted. The Court will grant Petitioner's motion and allow Petitioner to voluntarily dismiss Issues II and III from his petition. *See* Fed. R. Civ. P. 41(1). Petitioner may proceed on the remainder of the claims in his petition.

Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued August 21, 2013 (dkt. #24) is **ADOPTED in part and REJECTED in part**. In light of Petitioner's motion to delete his unexhausted claims, the Court will not dismiss the amended petition. Rather, Issues II and III are deleted from the petition, and the Petitioner may proceed on the remainder of the claims in the amended petition.

IT IS FURTHER ORDERED that Petitioner's Motion Request to Comply with the Magistrate's Recommendation and Request for Further Clarification and Guidance (dkt. #28) is **GRANTED**.

Dated: August 13, 2014

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE